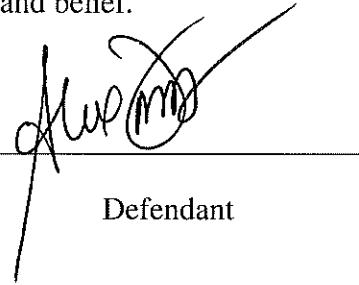


IN THE UNITED STATES COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

)  
**EDUARDO ROSARIO**)  
Plaintiff )  
)  
v. )  
Civil Action No. 20-2966  
)  
**ALEX TORRES PRODUCTIONS, INC**)  
Defendant )

**VERIFICATION**

Personally, appeared before me the undersigned who on oath states the facts set forth in this Motion to Dismiss are true and correct to the best of his knowledge and belief.



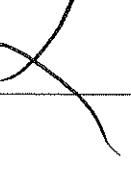
---

Defendant

Sworn and subscribed before me

This  day of , 2020.

  
\_\_\_\_\_  
Notary Public, State of Florida

My commission expires .

**Document Name:** IN THE UNITED STATES COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

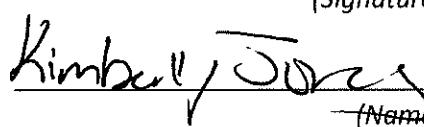
**State of Florida Jurat Notary Certificate**

**STATE OF FLORIDA**

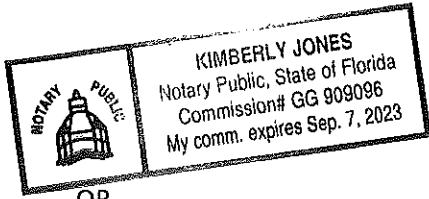
**COUNTY OF SEMINOLE**

Sworn to (or affirmed) and subscribed by personally appearing before me by physical presence this 13TH day of JULY, 2020, by, ALEX TORRES (name of person making statement).

  
(Signature of notary public)

  
(Name of notary public)

**Official Seal**



My commission expires: SEPT 7 2023

Personally known

OR

Produced identification  Type of identification produced: FLORIDA DRIVER LICENSE

IN THE UNITED STATES COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

)  
**EDUARDO ROSARIO** )  
*Plaintiff* )  
 )  
 )  
v. )  
 )  
**ALEX TORRES PRODUCTIONS, INC.** )  
*Defendant* )  
 )

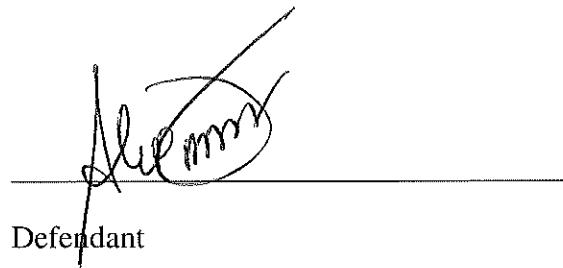
**Civil Action No. 20-2966**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing MOTION TO DISMISS upon counsel for all parties by depositing a copy of the same in the mail in an envelope thereon address as follows:

JOAN A. FEINSTEIN  
LENTO LAW GROUP, P.C.  
1500 MARKET STREET – 12<sup>TH</sup> FLOOR  
EAST TOWER  
PHILADELPHIA, PA 19102

This 13<sup>th</sup> day of July, 2020



---

Defendant

ALEX TORRES PRODUCTIONS, INC.  
651 WEYBRIGE COURT  
LALE MARY, FL. 32746  
PH: 321-215-1728

**IN THE UNITED STATES COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA**

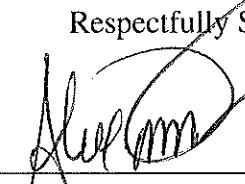
)  
**EDUARDO ROSARIO** )  
Plaintiff )  
)  
v. )  
Civil Action No. 20-2966  
)  
**ALEX TORRES PRODUCTIONS, INC.** )  
Defendant )

**DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM  
UPON WHICH RELIEF CAN BE GRANTED**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Alex Torres Productions, Inc., hereby moves this court to dismiss the Plaintiff Complaint with prejudice for failure to state a claim upon which relief can be granted. Plaintiff failed to comply with the Honorable Court order on the original complaint filing (Civil Action Case No. 19-2222) to include "legal authority if the complaint is refiled".

The bases for this motion are set forth in the accompanying Memorandum.

Respectfully Submitted,



Alex Torres  
Alex Torres Productions, Inc.  
651 Weybridge Court  
Lake Mary, FL. 32746  
Ph: 321-215-1728

**IN THE UNITED STATES COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA**

)  
**EDUARDO ROSARIO** )  
Plaintiff )  
v. )  
**ALEX TORRES PRODUCTIONS, INC.** )  
Defendant )  
)

Civil Action No. 20-2966

MEMORANDUM IN SUPPORT  
OF MOTION TO DISMISS

**HISTORY**

Defendant, Alex Torres Productions, Inc. (“Torres”) is an event promoter with principal place of business in the state of Florida. Some of “Torres” duties as a promoter may include; promote events, handles tickets sales, provide transportation, handle hotel accommodations and ensuring the talent shows up for the show in a timely manner.

Defendant “Torres” was the promoter for a Spanish comedy show that took place on Sunday February 10, 2019 at the Red Wine Restaurant (“Red Wine”) located at 701 Adams Avenue, Philadelphia, PA 19124. The “Red Wine” is a Restaurant with an event space on the lower floor. “Red Wine” has been presenting a diversity of shows for many years prior to the comedy show.

The Plaintiff bought a ticket to attend the show. But was unable to enjoy the show because “Red Wine” did not have adequate access for a handicap person on a wheelchair.

On July 1, 2019 the Plaintiff filed the original Civil Action Complaint (Case No. 19-cv-2222) through his attorneys Steven C. Feinstein, Esq. and Joseph D. Lento, Esq. against Defendants Alex Torres Productions, Inc. and La Guira, Inc. doing business as Red Wine Restaurant.

On December 20, 2019 at 10:28am a pretrial conference was held at this Honorable Court

presided by Honorable Judge Eduardo C. Robreno. Defendant “Torres” drove from Florida to be present at the pretrial conference. The Plaintiff’s counsel of record failed to appear in person at the pretrial conference.

On January 13, 2020 this Honorable Court order the Complaint dismissed and the Default ruling against co-defendant La Guira, Inc. was stricken for failure to prosecute.

## **ARGUMENT**

### **PLAINTIFF’S COMPLAINT FAILS TO FOLLOW THE COURT ORDER AND FAILS TO STATE A CLAIM UPON RELIEF MAY BE GRANTED**

- I. Plaintiff’s claim must be dismissed because his legal claims do not apply to Defendant “Torres” who is not the owner, landlord, leases, operates or manages the building where the Red Wine Restaurant (“Red Wine”) is located.
- II. Included on the Complaint (see page 4) is “ADA’s” Section 12182 et. Seq of “ADA”, as amended, which prays as follows:
  - (a) General Rule  
No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the good, services, facilities, privileges, advantages or accommodations of any place of public accommodation BY ANY PERSON WHO OWNS, LEASES (OR LEASES TO), OR OPERATES A PLACE OF PUBLIC ACCOMODATION.
- III. The Americans with Disabilities Act (ADA”) rules and regulations, as contained in the Code of Federal Regulations can not be applied to Defendant “Torres” because Defendant “Torres” is not the owner, landlord, leases or operates “Red Wine”

IV. Attached and marked as Exhibit "A" is a copy of the order by this Honorable Court on the original complaint issued on December 20, 2019 by Honorable Judge Eduardo C. Robreno which includes the following order; ***If the complaint is refiled, it shall include legal authority for the preposition that a promoter may be held liable under the circumstances presented in this case***.

V. Plaintiff failed to comply with this Honorable Court order on the original complaint to include "***legal authority***" by refiling the same exact complaint as the original complaint.

VI. Attached and marked as Exhibit "B" is a copy of the original complaint.

VII. Attached and marked as Exhibit "C" is a copy of the complaint refiling.

### **CONCLUSION**

For the reasons stated above, the Defendant's Motion to Dismiss should be granted.

Dated this 13<sup>th</sup> day of July, 2020

Respectfully Submitted,



---

Alex Torres  
Alex Torres Productions, Inc.  
651 Weybridge Court  
Lake Mary, FL. 32746  
Ph: 321-215-1728

**IN THE UNITED STATES COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA**

<u>EDUARDO ROSARIO</u>	)	
<i>Plaintiff</i>	)	
	)	
	)	
<i>v.</i>	)	<b>Civil Action No. 20-2966</b>
	)	
<u>ALEX TORRES PRODUCTIONS, INC</u>	)	
<i>Defendant</i>	)	

**ORDER**

Upon consideration of Defendant's Motion to Dismiss and the accompanying Memorandum of support, and any opposition thereto, it is this \_\_\_\_\_ day of \_\_\_\_\_, 2020, hereby:

\_\_\_\_\_ ORDERED Defendant's Motion to Dismiss is GRANTED and that:

Pursuant to Federal Rules of Civic Procedure Rule 12(b) (6)

The claims of the Plaintiff Eduardo Rosario are DISMISSED

IT IS SO ORDERED

---

UNITED STATES DISTRICT JUDGE

FIRMLY TO SE



U.S. POSTAGE PAID  
PME 2-Day  
LAKE MARY, FL  
32746  
JUL 13, 20  
AMOUNT

**\$26.35**  
R2305H126502-04



**PRIORITY  
MAIL  
EXPRESS®**



EJ 258 847 206 US

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ROM: (PLEASE PRINT)

PHONE ( )

Alex Torres Productions  
671 Weybridge Ct.  
Lake Mary, FL  
32746

## DELIVERY OPTIONS (Customer Use Only)

**SIGNATURE REQUIRED** Note: The mailer must check the "Signature Required" box if the mailer: 1) requires the addressee's signature; OR 2) Purchases additional Insurance; OR 3) Purchases COD service; OR 4) purchases Return Receipt service. If the box is not checked, the Postal Service will leave the item in the addressee's receptacle or other secure location without attempting to obtain the addressee's signature on delivery.

## Delivery Options

No Saturday Delivery (delivered next business day)  
 Sunday/Holiday Delivery Required (additional fee, where available)  
 10:30 AM Delivery Required (additional fee, where available)\*  
 \*Refer to USPS.com® or local Post Office® for availability.

D: (PLEASE PRINT)

PHONE ( )

US Dist Court Eastern District  
PA, Clerk's Office  
101 Market St. Room 2609  
Philadelphia, PA  
19106-1797

P + 4® (U.S. ADDRESSES ONLY)  
 For pickup or USPS Tracking™, visit USPS.com or call 800-222-1811.  
 \$100.00 Insurance included.

PAYMENT BY ACCOUNT (If applicable)			
USPS® Corporate Acct. No.	Federal Agency Acct. No. or Postal Service™ Acct. No.		
ORIGIN (POSTAL SERVICE USE ONLY)			
<input type="checkbox"/> 1-Day <input type="checkbox"/> 2-Day <input type="checkbox"/> Military <input type="checkbox"/> DPO PO ZIP Code      Scheduled Delivery Date (MM/DD/YY) 32746      7-15-20		Postage	
Date Accepted (MM/DD/YY) 7-13-20		Scheduled Delivery Time <input type="checkbox"/> 10:30 AM <input type="checkbox"/> 3:00 PM <del>12 NOON</del>	Insurance Fee \$ <del>\$</del>
Time Accepted 533 <del>8</del> PM		10:30 AM Delivery Fee \$ <del>\$</del>	COD Fee <del>\$</del> Return Receipt Fee <del>\$</del> Live Animal Transportation Fee <del>\$</del>
Special Handling/Fragile \$ <del>\$</del>		Sunday/Holiday Premium Fee \$ <del>\$</del>	
Weight lbs.      ozs.		Acceptance Employee Initials MDC	
<b>DELIVERY (POSTAL SERVICE USE ONLY)</b>			
Delivery Attempt (MM/DD/YY) <del>19106-1797</del>		Time <input type="checkbox"/> AM <input type="checkbox"/> PM Employee Signature	
Delivery Attempt (MM/DD/YY) <del>19106-1797</del>		Time <input type="checkbox"/> AM <input type="checkbox"/> PM Employee Signature	

LABEL 11-B, MARCH 2019

PSN 7690-02-000-9996

PEEL FROM THIS CORNER

EP13F Oct 2018  
OD: 12 1/2 x 9 1/2

